HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 13819 OF 1997

DATED: 29.8.2007

Between:

Y.K.S. Prakasa Rao

… Petitioner

and

APSEB, represented by its Member Secretary,
Vidyutsoudha, Hyderabad

… Respondent

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 13819 OF 1997

ORAL ORDER:

Heard Sri K. Vasudeva Reddy, the learned counsel for the petitioner and Sri P.R. Balarami Reddy, the learned Standing Counsel for the respondent-Board.

The petitioner retired on superannuation from the service of the APSEB-respondent herein, as Superintending Engineer on 31.8.1996 having been promoted to the said post, though labelled as a temporary promotion, by proceedings dated 6.8.1996.

The grievance of the petitioner is as regards the action of the respondent-Board in failing to consider his case for promotion to the post of Superintending Engineer from the category of Divisional Engineer, to which latter category he was promoted by proceedings dated 15.5.1985 and despite his seniority position as reflected at Sl.No.145 in the provisional seniority list dated 3.4.1991, which is claimed to have been the operative seniority list as on the date promotions were considered to the post of a Superintending Engineer, in 1993 and 1994.

The writ petition was filed on 30.6.1997 and though 10 years

and 2 months have passed by, there is no counter affidavit on record. The writ petition is, therefore, heard and disposed of on merits and on the basis of non-traverse of the allegations in the writ petition. This court must, however, record its deep sense of distress at this grossly negligent and irrelevant conduct of a public authority in failing to file a response to a citizen's/employee's grievance regarding illegal and arbitrary conduct by a State authority in respect of public employment and of rights guaranteed under Articles 14 and 16 of the Constitution of India.

Be that as it may.

The petitioner first entered service of the respondent on 16.7.1962 as a Junior Engineer. He was thereafter promoted to the next higher category of an Assistant Divisional Engineer w.e.f. 22.6.1964 and then as a Divisional Engineer w.e.f. 15.5.1985, in his due turn. The next avenue of promotion is to the category of Superintending Engineer.

The relevant regulations governing appointments/promotions to the several categories of service in the respondent are set out in the A.P. State Electricity Board Service Regulations Part-III (for short 'the Regulations'). Regulation 3(A) stipulates:

> ***"The Board shall constitute the Departmental Promotion Committee to various categories of posts to be filled in by promotion. The appointing authority shall refer all cases involving promotion, to the Departmental Promotion Committee with relevant information. The Departmental Promotion Committee shall arrange the candidates in the order of merit/seniority subject to fitness, as the case may be, and submit a list to the appointing***

authority for approval. The proceedings of the D.P.C. shall be recommendatory and shall be approved by the appointing authority. If any deviations from the recommendations of the D.P.C., are made, the appointing authority shall record in writing the reasons for such deviations. All appointments by promotion shall be made from such approved list."

Regulation 3 (B) sets out the guidelines to be followed by the Departmental Promotions Committee (for short 'the DPC') for evaluating the performance of an employee while considering promotion to a higher cadre. The following are the guidelines mandated on the DPC, under Regulation 3 (B) [to the extent relevant and material]:

(i) Allegations or complaints	Shall not be a bar for considering promotion.
(ii) Enquiry Officer is appointed and a charge sheet has been framed and served on the concerned or showcause notice proposing the punishment is issued OR under suspension OR Disciplinary authority has recorded on file his decision that a Prima facie case exists.	Shall be considered for promotion in their due turn and included in the list of approved candidates at appropriate place after satisfying all other requirements. A note shall however be recorded against the entry in the list that the enlistment is subject to the result of the disciplinary case.

(iii) After finalisation of the disciplinary proceedings indicated under sub-clause (ii) above, such cases shall be regulated as follows:

(a) Exonerating or Warning	Shall be promoted notionally with effect from the date of assumption of charge on promotion of his immediate junior in the list of approved candidates. His pay shall be regulated with reference to that junior without payment of arrears as per Regulation.
(b) Censure	Shall be promoted after six months from the date of awarding "Censure" or when the turn of his junior from the list of approved candidates comes up for promotion, after the date of awarding "Censure" whichever is earlier".

By proceedings dated 3.4.1991, the respondent-Board issued a seniority list of Divisional Engineers/Executive Engineers promoted from the lists of approved candidates belonging to the categories of Assistant Divisional Engineers/El and provisionally fixed the ***inter se*** seniority as per the appendix annexed to the proceedings. The petitioner asserts and there is no denial of this assertion by the respondent that as per this provisional seniority list, the petitioner is placed at Sl.No.145 in the provisional seniority list of Divisional Engineers (Electrical).

A DPC for considering promotions from the category of Divisional Engineers to Superintending Engineers was constituted. It met on 16.8.1993. By the said date, it is the petitioner's assertion and there is no denial of this assertion that

there was no disciplinary inquiry; a show cause notice or a charge-sheet issued against him, alleging any misconduct. No Inquiry Officer was either appointed. The petitioner was not also placed under suspension, but continued in active duty.

Consequent on the DPC held on 16.8.1993, however, by an order dated 3.12.1993, Divisional Engineers, junior to the petitioner as per the seniority list dated 3.4.1991, including Sarvasri A. Subbaraju, R. Ramasubba Rao and R.V.K. Ramakrishna Sarma (at Sl.Nos.147 to 149 in the seniority list dated 3.4.1991) were promoted as Superintending Engineers, ignoring the just claims of the petitioner for such promotion, in his due turn. This is the complaint.

The petitioner made several representations commencing from 1.10.1994 on coming to know of his repeated supersession including one on 15.4.1996, whereat in detail, the petitioner pointed out that neither on the date of DPC i.e. 16.8.1993 nor the date of promotion on 3.12.1993, was there even a whisper of a misconduct or a departmental inquiry pending against him. This representation also pointed out that an Inquiry Officer was appointed on 22.6.1994 for the first time and these proceedings was revised on 21.7.1994. An inquiry was conducted and inquiry report submitted by the Chief Engineer (Planning) on 21.12.1994, whereat he exonerated the petitioner of the charge alleged but recommended issuance of a warning. However, the Board issued

show cause notices dated 24.5.1995, calling for the petitioner's explanation and proposing the punishment of stoppage of two increments. The petitioner submitted his explanations to the show cause notices on 14.7.1995 and 15.7.1995. No action was taken thereon (vide the petitioner's representation dated 15.4.1996). The petitioner also pointed out that the inquiry was prolonged for no fault of his and solely on account of the incompetence of the respondent in conducting an inquiry. The petitioner concluded the representation praying for expediting the finalization of his case and issuance of promotion orders on a review of the issue and granting him promotion as Superintending Engineer with retrospective effect i.e., with effect from the date on which his juniors at Sl.Nos. 147 to 149 were so promoted, vide proceedings dated 3.12.1993.

By proceedings dated 6.8.1996, the petitioner was temporarily promoted as Superintending Engineer (Electrical) from the category of Divisional Engineer (Electrical). The promotion is labelled as temporary, on account of certain pending service litigation and was on terms similar to the orders issued to other officers as Superintending Engineers.

The petitioner sent up another representation dated 28.8.1996, pointing out that pursuant to show cause notices issued by the respondent on 24.5.1995 and after considering his explanations thereto, the respondent-Board by orders dated 16.7.1996, 27.6.1996 and 7.6.1996 respectively had administered

either a censure or warning in each of the cases and no substantive penalty was imposed. In this representation, the petitioner reiterated his claim that as there was no inquiry pending either on the date of the meeting of the DPC (16.8.1993) or the date on which his juniors at Sl.Nos. 147 to 149 were promoted (3.12.1993), nor was any disciplinary proceedings pending against him even in an embryonic state of a show cause notice seeking explanation. To the several detailed representations of the petitioner, the respondent communicated a response dated 27.12.1996. This response is illustrative of a wholly irrelevant and grossly negligent and abdicatory administrative attitude. It reads as under:

> ***"The request of Sri Y.K.S. Prakasa Rao, Superintending Engineer/Elecl. (Retd) contained in the referenced first cited for retrospective promotion as Superintending Engineer/Elecl, does not merit consideration. Accordingly it is rejected."***

The respondent is an instrumentality of the State. As such, it is obligated to the Constitutional injunctions of equality under Articles 14 and 16 of the Constitution of India. The respondent is also subject to the service regulations framed for contouring the service conditions of its employees. The Regulations mandate that promotions to the several categories of service, including from the categories of Divisional Engineers to Superintending Engineers shall be in the order of merit/seniority, subject to fitness [Regulation 3 (A)]. The Regulations further prescribe the

guidelines to be followed by the DPC. These prescriptions are not administrative, but statutory, as they are contained in the service regulations. The guidelines ordain the DPC that mere allegations or complaints are not a bar for considering promotion and even in a case where an Inquiry Officer is appointed and charge-sheet framed and served on the concerned or a show cause notice proposing punishment is issued or if the officer is under suspension or the disciplinary authority has recorded on file his decision as to a ***Prima facie*** case existing, such officer shall be considered for promotion in his due turn and included in the list of approved candidates at the appropriate place, but a note shall be recorded against the entry in the list that the enlistment is subject to the result of the disciplinary case.

On a true and fair construction of the provisions of Regulation 3 (B) (i) and (ii), the conclusion is irresistible that an unconcluded departmental inquiry shall not be a bar for considering or promoting an officer in his turn.

On the uncontroverted facts, it is clear that neither on 16.8.1993 nor on 3.12.1993, the respective dates on which the petitioner's case ought to have been considered and was perhaps considered for promotion as Superintending Engineer by the DPC and orders of promotion issued, including to the petitioner's juniors in the category of Divisional Engineers, was there any disciplinary proceeding pending against him even in an embryonic stage.

On the analysis above, the conduct of the respondent in failing to grant the petitioner promotion as Superintending Engineer w.e.f. 3.12.1993, the date on which the petitioner's juniors were promoted as Superintending Engineers is, in the circumstances, wholly arbitrary and unsustainable. The laconic and wholly non-speaking response of the respondent to the several representations of the petitioner (by the orders dated 27.12.1996), is condemnable and illustrative of a reckless disregard for even a minimal standard of fairness and concern required from an administrator of a public authority.

Consequently, the petitioner is seen to have established his entitlement for promotion as a Superintending Engineer with effect from the date on which his juniors at Sl.Nos. 147 to 149 were so promoted by proceedings dated 3.12.1993. The petitioner is also entitled to all consequential and incidental monetary benefits, consequent on such promotion. From the laconic non-speaking response of the Board, in its proceedings dated 27.12.1996, and from the failure to file a counter affidavit to this writ petition, despite lapse of 10 years and 2 months, an inference is irresistible that the respondent has no defence, whatsoever, to the petitioner's assertion as to arbitrary, discriminatory and Unconstitutional treatment by the respondent.

For the aforesaid reasons, the writ petition is allowed. The respondent is directed to consider and grant promotion to the

petitioner w.e.f. 16.8.1993, the date on which the petitioner's juniors at Sl.No.147 to 149 ***qua*** the seniority list dated 3.4.1991 have been promoted as Superintending Engineers, with all consequential and incidental benefits as to the restoration of seniority, salary, arrears of salary and other emoluments and revision of terminal benefits as well, if any. This exercise shall be carried out by the respondent with utmost expedition and in any event, within 30 days from the date of receipt of a copy of this order.

The conduct of the respondent in issuing the ***ipse-dixit***, non-speaking reply dated 27.12.1996, to the petitioner's representations, the conduct in ignoring the petitioner's just claims for promotion and without explanation and in failing to file a counter affidavit for over a decade, constitutes a vagrant degree of mal-administration. This court, therefore, considers it appropriate to allow the writ petition with costs of Rs.20,000/- (rupees twenty thousand only), of which Rs.10,000/- (rupees ten thousand only) shall be paid to the petitioner and Rs.10,000/- (rupees ten thousand only) to the Secretary, A.P. State Legal Services Authority, within a period of 30 days from the date of receipt of a copy of this order.

The writ petition is allowed as above, with costs.

GODA RAGHURAM, J

Date: 29.8.2007
Note: Copy of this order be marked to the Secretary, A.P. State Legal Services Authority, for information.

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CVM